

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD W. WEAVER JR.,) NO. ED CV 23-1888-TJH(E)
)
Plaintiff,)
) ORDER DISMISSING COMPLAINT
v.)
) WITH LEAVE TO AMEND
SHERIFF JOHN DOE, ET AL.,)
)
Defendants.)
_____)

For the reasons discussed below, the Complaint is dismissed with
leave to amend. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b)(1).

BACKGROUND

On September 13, 2023, pursuant to 42 U.S.C. section 1983,
Plaintiff filed a "Civil Rights Complaint" against two fictitiously

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1 named Defendants: Nurse "Jane Doe," and "Sheriff John Doe."¹ On
 2 November 9, 2023, the Court granted Plaintiff in forma pauperis
 3 status.

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 5 SUMMARY OF PLAINTIFF'S ALLEGATIONS
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7 Plaintiff alleges that, when he was a detainee in the Robert
 8 Presley Detention Center, he "requested to see the doctor" "so that
 9 [Plaintiff] could get proper medical attention to treat my [left foot]
 10 infection." According to Plaintiff, Nurse "Jane Doe" denied
 11 Plaintiff's request to see the doctor. Plaintiff alleges that he then
 12 wrote unspecified grievances. Plaintiff also alleges that "[f]inally
 13 [Plaintiff] wrote to Sheriff Doe but never heard from him."

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 24 ¹ A plaintiff may name a fictitious defendant in the
 25 complaint if the plaintiff does not know the true identity of the
 26 defendant prior to the filing of the complaint. Wakefield v.
 27 Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999). However,
 28 Plaintiff should be aware that, before the United States Marshal
 can serve process on any fictitiously named Defendant, Plaintiff
 must provide identifying information sufficient to permit the
 service of process, such as the Defendant's full name and
 address.

DISCUSSION

A pretrial detainee's right to adequate medical care is protected by the Fourteenth Amendment's substantive Due Process Clause. See Gordon v. City of Orange, 888 F.3d 1118, 1124-25 (9th Cir. 2018), cert. denied, 139 S. Ct. 794 (2019).² Such claims must be evaluated under an objective deliberate indifference standard. Id.; Brown v. Patterson, 2022 WL 1241362, at *2 (E.D. Cal. April 27, 2022) (citation omitted). Under this standard, the detainee must allege facts plausibly demonstrating:

- (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;
- (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries.

Gordon v. City of Orange, 888 F.3d at 1125. The "mere lack of due care by a state official does not deprive an individual of life,

² The Court assumes Plaintiff was a pretrial detainee, and not a sentenced prisoner, at the time of the events alleged in the Complaint. A different standard (under the Eighth Amendment) applies to a medical care claim brought by a sentenced prisoner. See Farmer v. Brennan, 511 U.S. 825 (1994).

1 liberty, or property under the Fourteenth Amendment." Castro v. City
2 of Los Angeles, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc), cert.
3 denied, 580 U.S. 1099 (2017) (citations omitted). Thus, a plaintiff
4 must plead facts from which it plausibly may be inferred that a
5 defendant acted with "something akin to reckless disregard" for the
6 plaintiff's health. Id.

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8 Here, Plaintiff's vague and conclusory allegations do not suffice
9 to state a claim against either Defendant. See Gordon v. City of
10 Orange, 888 F.3d at 1125; see also Ashcroft v. Iqbal, 556 U.S. 662,
11 681 (2009) (conclusory allegations are "not entitled to be assumed
12 true"). Plaintiff fails to allege with any degree of specificity what
13 he allegedly advised Jane Doe concerning Plaintiff's asserted need to
14 see a doctor. Thus, it cannot plausibly be inferred that a reasonable
15 official in Jane Doe's circumstances would have appreciated that there
16 existed any high degree of risk to Plaintiff's health, or that Jane
17 Doe's mere asserted failure to summon the doctor actually caused
18 Plaintiff any injuries. Further, the extent and duration of any
19 alleged injuries are not adequately pleaded.

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21 As to Sheriff John Doe, "[a] defendant may be held liable as a
22 supervisor under § 1983 if there exists either (1) his or her personal
23 involvement in the constitutional deprivation, or (2) a sufficient
24 causal connection between the supervisor's wrongful conduct and the
25 constitutional violation." Starr v. Baca, 652 F.3d 1202, 1207 (9th
26 Cir. 2011), cert. denied, 566 U.S. 982 (2012). Plaintiff fails to
27 allege with any degree of specificity facts showing Sheriff John Doe's
28 "personal involvement in the constitutional deprivation" or a

1 "sufficient causal connection between" John Doe`s "wrongful conduct
 2 and the constitutional violation." Plaintiff does not even allege
 3 what he "wrote" to Sheriff John Doe. Contrary to Plaintiff`s evident
 4 suggestion, John Doe`s status as Sheriff did not make John Doe liable
 5 for Plaintiff`s medical care or for the alleged misconduct of the
 6 Sheriff`s employees. "Government officials may not be held liable for
 7 the unconstitutional conduct of their subordinates on a theory of
 8 respondeat superior." Ashcroft v. Iqbal, 556 U.S. at 676; see Monell
 9 v. New York City Dep`t. Of Soc. Servs., 436 U.S. 658, 691 (1978).
 10 Further, a supervisor`s mere knowledge of a subordinate`s alleged
 11 misconduct is insufficient to hold the supervisor liable. Id. at 677.

12 13 ORDER

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 15 The Complaint is dismissed with leave to amend. If Plaintiff
 16 still wishes to pursue this action, he is granted thirty (30) days
 17 from the date of this Order within which to file a First Amended
 18 Complaint. Any First Amended Complaint shall be complete in itself
 19 and shall not refer in any manner to any prior Complaint. Plaintiff
 20 may not add defendants without leave of Court. See Fed. R. Civ. P.
 21 21. Failure timely to file a First Amended Complaint in conformity
 22 with this Order may result in the dismissal of the action. See
 23 Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002), cert.
 24 denied, 538 U.S. 909 (2003) (court may dismiss action for failure to
 25 follow court order); Simon v. Value Behav. Health, Inc., 208 F.3d
 26 1073, 1084 (9th Cir.), amended, 234 F.3d 428 (9th Cir. 2000), cert.
 27 denied, 531 U.S. 1104 (2001), overruled on other grounds, Odom v.
 28 Microsoft Corp., 486 F.3d 541 (9th Cir.), cert. denied, 552 U.S. 985

(2007) (affirming dismissal without leave to amend where plaintiff failed to correct complaint's deficiencies, court had afforded plaintiff opportunities to do so, and court had given plaintiff notice of the substantive problems with his claims); Plumeau v. Sch. Dist. No. 40, Cty. of Yamhill, 130 F.3d 432, 439 (9th Cir. 1997) (denial of leave of amend appropriate where further amendment would be futile).

IT IS SO ORDERED.

DATED: November 21, 2023.



TERRY J. HATTER JR.
UNITED STATES DISTRICT JUDGE

PRESENTED this 14th day
of November, 2023 by:

/s/
HON. CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE